

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: Government Efficiency Appropriations Committee

BILL: CS/CS/SB 1742

INTRODUCER: Government Efficiency Appropriations Committee, Transportation Committee and Senator Sebesta

SUBJECT: Highway Safety and Motor Vehicles

DATE: April 24, 2006

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Davis	Meyer	TR	Fav/CS
2. Dugger	Cannon	CJ	Fav/1 amendment
3. Pardue	Skelton	DS	Fav/1 amendment
4. Keating	Johansen	GE	Fav/CS
5. _____	_____	TA	_____
6. _____	_____	_____	_____

I. Summary:

This CS contains several changes to the highway safety and motor vehicles laws administered by the Department of Highway Safety and Motor Vehicles (DHSMV). Examples of provisions in the CS include:

- Grants DHSMV the authority to make rules regarding settlement or compromise of commercial motor vehicle taxes, penalties or interests; and authorizes DHSMV to enter into agreements for scheduling payments of those taxes and penalties;
- Allows homeowners' associations to have state traffic laws enforced by local law enforcement agencies;
- Requires motorcycle riders under 21 years old to display a license plate unique in design and color; requires that the owner must prove when registering a motorcycle that he/she has obtained a motorcycle endorsement on his/her driver license; and requires every first time applicant for licensure to operate a motorcycle to provide proof of completion of a motorcycle safety course;
- Authorizes local governments to enact more restrictive golf cart equipment and operation regulations within a retirement community; requiring public notification; providing for enforcement jurisdiction;
- Exempts dump truck vehicles and vehicles having a dump body from the requirement that the rear registration plate be illuminated when driving at night;
- Brings intrastate hours-of-service requirements for commercial motor carriers into compliance with federal tolerance guidelines, and provides for changes recently enacted into federal law for utilities and agricultural transportation;

- Prohibits operators of pickup trucks and flatbed trucks from allowing minors, defined as individuals under 18 years of age, from riding on the bed of these trucks unless the trucks have been modified to include secure seating and safety restraints and the minors are properly restrained;
- Creates the Future Farmers of America, Operation Iraqi Freedom and Operation Enduring Freedom license plates;
- Revises the definitions of driver's license, identification card, and temporary driver license or temporary identification card to comply with federal requirements;
- Changes the minimum age requirement at which identification cards may be issued from 12 years old to 5 years old;
- Revises the criteria related to the proof of nonimmigrant classification of an applicant for an identification card or driver's license to comply with federal requirements;
- Modifies the methods by which an applicant may make a claims against the Mobile Home and Recreational Protection Trust Fund;
- Revises certain law enforcement and judicial procedures for suspension of a drivers license for driving with unlawful blood or breath alcohol level and the review of such suspensions; and
- Directs DHSMV to study the outsourcing of driver license services to a provider, in whole or in part, while retaining responsibility and accountability for the services and requires a report to be submitted.

This CS substantially amends sections 207.008, 207.021, 261.10, 316.003, 316.006, 316.0085, 316.1001, 316.192, 316.1955, 316.2015, 316.2095, 316.211, 316.2125, 316.221, 316.302, 316.515, 318.143, 318.15, 318.18, 318.32, 320.02, 320.03, 320.07, 320.0706, 320.08056, 320.08058, 320.089, 320.27, 320.405, 320.77, 320.781, 322.01, 322.02, 322.05, 322.051, 322.08, 322.12, 322.121, 322.135, and 322.2615; and creates sections 261.20, 316.2123, 316.2128, and 318.1435, of the Florida Statutes.

In addition, this CS creates an undesignated section of law.

II. Present Situation:

Settlement or Compromise of Commercial Motor Vehicle Taxes, Penalties or Interest

Background

In 1981, the Legislature passed HB 439¹ transferring the taxation of motor fuel and special fuel from the Public Service Commission to the Department of Revenue. In 1987, the Legislature passed HB 761² transferring the fuel use tax functions of the Department of Revenue to DHSMV. Since the transfer of the administration of ch. 207, F.S., to DHSMV from the Department of Revenue, DHSMV's authority to settle or compromise assessments and enter into stipulation agreements has been uncertain. The CS addresses three areas related to taxes, penalties and interest assessed by DHSMV: record-keeping requirements; informal settlement conferences; and scheduling payments.

¹ Chapter 81-151, Laws of Florida

² Chapter 87-198, Laws of Florida

Records

Section 207.008, F.S., requires each registered motor carrier to maintain records and papers as required by the Department of Revenue for the administration of the settlement or compromise of taxes, penalties, or interest. Motor carriers are to preserve these records until the expiration of the time within which the Department of Revenue is able to make an assessment with respect to that tax pursuant to Florida law³.

Informal Conferences

Section 207.021, F.S., only allows DHSMV to settle or compromise penalties or interest imposed under ch. 207, F.S., using the provisions of s. 213.21, F.S., which relates to the Department of Revenue. There is no specific authority in ch. 207, F.S., for DHSMV to conduct informal conferences for the resolution of disputes arising from the assessment of taxes, penalties, or interest.

The International Registration Plan

The International Registration Plan (IRP) is a program for licensing commercial vehicles in interstate operations among member jurisdictions. The member jurisdictions of IRP are all states (except Alaska and Hawaii), the District of Columbia, and the Canadian provinces (except Yukon and Northwest Territory).

Under this program, an interstate carrier files an apportioned registration application in the state or province where the carrier is based (the base jurisdiction). The fleet vehicles and the miles traveled in each state are listed on the application. The base jurisdiction collects the full license registration fee and then distributes the fees to the other jurisdictions based on the percentage of miles the carrier will travel, or has traveled in each jurisdiction. The base jurisdiction also issues a license plate showing the word “apportioned” and a cab card showing the jurisdictions and weights for which the carrier has paid fees.

Section 320.405, F.S., relating to the IRP, does not authorize DHSMV to enter into agreements for scheduling payments of taxes and penalties due to DHSMV as a result of audit assessment issues.

All-Terrain Vehicles (ATV's)***Operation***

Current law, s. 316.2074, F.S., does not allow all-terrain vehicles to be operated on public roads, streets, or highways, except as permitted by a managing state or federal agency. All-terrain vehicles are defined in s. 316.2074, F.S., as any motorized off-highway vehicle 50 inches or less in width, having a dry weight of 900 pounds or less, designed to travel on three or more low-pressure tires, having a seat designed to be straddled by the operator and handlebars for steering control, and intended for use by a single operator with no passenger. The definition of “all-terrain vehicle” also includes any “two-rider ATV” as defined in s. 317.0003, F.S.

According to the Division of Forestry the speed limit on all roads within forests is 30 mph unless posted otherwise. These speed limits are based on road design and basic knowledge of maximum

³ Section 95.091(3), F.S.

safe speeds within each park. The T. Mark Schmidt Off-Highway Vehicle Safety and Recreation Act, Chapter 261, F.S., provides the State of Florida with a set of guidelines to follow for maintaining and providing state lands for Off-Highway Motorcycle and All-Terrain Vehicle users. This act does not allow all-terrain vehicles to be operated on public roads, streets, or highways, except as permitted by a managing state or federal agency. Specifically, s. 261.10, F.S., provides that state off-highway-vehicle recreation areas and trails must be designated and maintained for recreational travel by off-highway vehicles, not generally suitable or maintained for normal travel by conventional two-wheel-drive vehicles, and foot traffic.

Section 316.2074, F.S., also provides the following related to ATV's:

- No person under 16 years of age is allowed to operate, or ride an all-terrain vehicle unless the person wears an approved safety helmet and eye protection;
- If a crash results in the death of any person or injury of any person which results in treatment of the person by a physician, the operator of each all-terrain vehicle involved in the crash must give notice of the crash as required by s. 316.066, F.S.;
- An all-terrain vehicle having four wheels may be used by police officers on public beaches designated as public roadways for the purpose of enforcing the traffic laws of the state. All-terrain vehicles may also be used by the police to travel on public roadways within 5 miles of beach access only when getting to and from the beach;
- An all-terrain vehicle having four wheels may be used by law enforcement officers on public roads within public lands while in the course and scope of their duties; and
- A violation of this section is a noncriminal traffic infraction, punishable as a nonmoving violation as provided in chapter 318, F.S.

Traffic Control Jurisdiction of Homeowner's Associations

State law enforcement agencies, county sheriff's offices, and city police departments are authorized to enforce the state's traffic laws on all public roads and other areas where the public has the right to travel by motor vehicle. In some instances, traffic laws may be enforced on privately owned roads and property upon written authorization for enforcement. (See ss. 316.006, 316.072, and 316.640, F.S.)

Skateboarding, Inline skating, Freestyle bicycling, Paintball, and Liability

In 1999, in response to the growing phenomenon that has become skating in its various forms, the Florida Legislature enacted s. 316.0085, F.S.⁴ The purpose of this section is to encourage governmental owners or lessees of property to make land available to the public for skateboarding, inline skating, and freestyle bicycling. The Legislature acknowledged that the lack of public skating areas has been caused in large part by the potential exposure to liability from personal injury lawsuits, as well as the prohibitive costs of insurance. In 2004, the Legislature passed ch. 2004-288, L.O.F., to include paintball in the list of activities to which immunity applies.

⁴ Chapter 99-133, L.O.F.

Section 316.0085, F.S., limits the liability of governmental entities⁵ for personal property damage or bodily injuries arising from skating or bicycling on property owned or leased by a governmental entity for such activities. However, this limitation on liability does not extend to any independent concessionaire, or any person or organization other than a governmental entity or public employee, regardless of whether the person or organization has a contractual relationship with the governmental entity.

Subsection (5) of s. 316.0085, F.S., specifies that the section does not otherwise limit liability that exists for: 1) failure to guard against or warn of a dangerous condition that a participant does not and cannot reasonably be expected to have noticed; 2) gross acts of negligence by the entity or any of its employees considered to be the proximate cause of the injury; or 3) failure of the governmental entity to obtain written parental consent from the parents of children under 17 to participate in these activities. It is important to note, however, that this legislation may not be deemed to constitute a waiver of sovereign immunity, regardless of whether the entity carries an insurance policy that covers the act and the limits of such coverage

Any person, regardless of age, who participates in, assists in, or observes any of these activities assumes the known and unknown inherent risks in this activity and is legally responsible for all damages, injury, or death to himself or herself that may result from the activity. Further, subsection (7) of s. 316.0085, F.S., outlines the responsibilities of participants in these activities, including the requirement to: 1) act within the limits of his or her ability, as well as the design and purpose of the equipment used; 2) maintain control of his or her person and equipment used; and 3) refrain from acting in any manner which may cause or contribute to the death or injury of himself, herself, and other persons.

Leased Vehicles

In 2005, the Legislature passed HB 1697 (ch. 2005-164 L.O.F.) to require all motor vehicles subject to a long-term lease to be registered in the name of the lessee (owner); to provide that the owner of a leased vehicle is not responsible for parking violations if the vehicle is registered to the lessee; and that in such cases, the owner need not furnish evidence to shift responsibility to the lessee.

Reckless Driving

Currently, s. 316.192, F.S., provides that any person who drives any vehicle in willful or wanton disregard for the safety of person or property is guilty of reckless driving. A first conviction of reckless driving is punishable by a prison term of not more than ninety days and/or a fine of not less than \$25 or more than \$500. Any person who commits reckless driving which results in damage to person or property of another is punishable as a first degree misdemeanor. Any person who commits reckless driving which results in serious bodily injury to another commits a third degree felony.

⁵ The term “governmental entity” is defined to mean the United States, State of Florida, or any county or municipality, or any department, agency, or other instrumentality thereof. Section 316.0085(2)(a), F.S.

Section 316.1935, F.S., provides any person who flees or attempts to elude a law enforcement officer commits a third degree felony. Any person who willfully flees or attempts to elude a law enforcement officer while driving at a high speed with a wanton disregard for the safety of persons or property resulting in serious bodily injury to another person commits a first degree felony.

Riding on the Exterior of Vehicles

Section 316.2015 (1), F.S. provides it is unlawful for any operator of a passenger vehicle to permit any person to ride on the bumper, radiator, fender, hood, top, trunk, or running board of such vehicle when operated upon any street or highway which is maintained by the state, county or municipality. However, the operator of any vehicle shall not be in violation of this section when such operator permits any person to occupy seats securely affixed to the exterior of such vehicle. This infraction is a moving violation punishable by a fine of \$60 plus applicable court costs and fees and an assessment of 3 points against the driver's license. The fees and court costs vary county by county.

Section 316.2015 (2), F.S., prohibits a passenger from riding on any portion of a vehicle that is not designed or intended for the use of passengers, except for employees doing so as part of employment duties, or persons riding within truck bodies in space intended for merchandise (i.e., the bed of pick-up trucks). This infraction is a non-moving violation punishable by a fine of \$30 plus applicable court costs and fees.

Section 316.2015 (3), F.S., provides that the prohibitions within s. 316.2015, F.S., do not apply to a performer engaging in, or preparing for, an exhibition or parade.

Motorcycle Riders

Handholds

The 2005 Legislature passed HB 1697 which amended s. 316.2095, F.S., to include a provision requiring any motorcycle carrying a passenger, other than in a sidecar or enclosed cab, to be equipped with footrests and handholds for the passenger.

In addition to Florida, 45 states require footrests for motorcycle passengers. Nine other states (Alaska, Arizona, Arkansas, Maryland, New Hampshire, Pennsylvania, Rhode Island, Utah, Vermont) and the District of Columbia require handholds (in addition to footrests) for motorcycle passengers.

Equipment

The National Highway Traffic Safety Administration has a legislative mandate under Title 49 of the United States Code, Chapter 301, Motor Vehicle Safety, to issue Federal Motor Vehicle Safety Standards (FMVSS) and Regulations to which manufacturers of motor vehicle and equipment items must conform and certify compliance. FMVSS Standard No. 218, establishes minimum performance requirements for helmets designed for use by motorcyclists and other motor vehicle users.

Currently, s. 316.211, F.S., provides the following requirements for motorcycle and moped riders:

- A person is not to operate or ride on a motorcycle unless the person is properly wearing protective headgear which complies with FMVSS Standard 218;
- A person may not operate a motorcycle unless the person is properly wearing an eye-protective device of a type approved by DHSMV;
- These regulations do not apply to persons riding within an enclosed cab or 16 years of age or older and operating or riding a motorcycle powered by a motor with a displacement of 50 cubic centimeters or less or not rated in excess of 2 brake horsepower and which is not capable of propelling itself at a speed greater than 30 miles per hour on level ground;
- A person over 21 years of age is allowed to operate or ride a motorcycle without wearing protective headgear if he/she is covered by an insurance policy providing for at least \$10,000 in medical benefits for injuries incurred as a result of a crash while operating or riding on a motorcycle;
- A person under 16 years of age may not operate or ride a moped unless the person is properly wearing protective headgear which complies with FMVSS Standard 218; and
- DHSMV must make available a list of approved protective headgear, and the list must be provided on request.

Registration

Currently, under s. 320.02, F.S., every owner or person in charge of a motor vehicle operated or driven on the roads of this state is required to register the vehicle in this state. The owner or person in charge must apply to DHSMV or to its authorized agent for registration on a form prescribed by DHSMV.

Examination of Applicants

Currently, s. 322.12, F.S., requires every first-time applicant for licensure to operate a motorcycle who is under 21 years of age to provide proof of completion of a motorcycle safety course, as provided in s. 322.0255, F.S., before the applicant is licensed to operate a motorcycle.

Golf Cart Restrictions

Section 316.212, F.S., provides that a golf cart may be operated between sunrise and sunset (daylight) hours, unless the responsible governmental entity has determined a golf cart may be operated between sunset and sunrise (nighttime) hours and the golf cart is equipped with headlights, brake lights, turn signals, and a windshield. Golf carts must be equipped with efficient brakes, reliable steering apparatus, safe tires, a rearview mirror, and red reflectorized warning devices in both the front and rear. A golf cart may not be operated on public roads or streets by any person under the age of 14.

Section 316.2125, F.S., provides for the reasonable operation of a golf cart within any self-contained retirement community unless:

- A county or municipality prohibits the operation of golf carts on any street or highway under its jurisdiction when the governing body of the county or municipality determines such prohibition is necessary in the interest of safety.
- The Department of Transportation (FDOT) prohibits the operation of golf carts on any street or highway under its jurisdiction when it determines such prohibition is necessary in the interest of safety.

Motorized Scooters and Miniature Motorcycles

Background

Motorized scooters are two-wheel vehicles, equipped with either a small two-cycle gasoline engine or an electric motor and a battery. To operate within the letter of the law some manufacturers are retrofitting these scooters with electric motors and kits. The gasoline-powered scooters usually cost between \$400 and \$1,300. Electric scooters range from under \$200 to about \$1,000.

The U.S. Consumer Product Safety Commission (CPSC) is charged with protecting the public from unreasonable risks of serious injury or death from more than 15,000 types of consumer products under the agency's jurisdiction. A new year-long study released by CPSC⁶ finds there were an estimated 10,000 emergency room injuries involving powered scooters nationally from July 2003 through June 2004.

Chapter 322, F.S., relating to drivers' licenses, defines the term "motor vehicle" as any self-propelled vehicle, including a motor vehicle combination, not operated upon rails or guideway, excluding vehicles moved solely by human power, motorized wheelchairs, and motorized bicycles. This definition requires the operator of any motor vehicle including motorized scooters, operating on the public roadways to have a class E driver's license.

Section 320.02, F.S., relating to motor vehicle registration, provides that every owner or person in charge of a motor vehicle which is operated or driven on the roads of this state must register the vehicle in this state. While that chapter requires any motor vehicle to be registered, s. 320.08, F.S., does not provide a license tax classification for motorized scooters. The DHSMV has therefore advised that since such vehicles may not be registered, they may not be operated on the public streets and roads.

Section 316.1995, F.S., provides that no person may drive any vehicle other than by human power upon a bicycle path, sidewalk, or sidewalk area, except upon a permanent or duly authorized temporary driveway and provides penalties. Motorized scooters are not exempted from the definition of "vehicle" in section 316.003(75), F.S., which defines the term as every device, in, upon, or by which any person or property is or may be transported or drawn upon a highway, excepting devices used exclusively upon stationary rails or tracks. Thus, motorized scooters appear to be prohibited from operating on sidewalks.

⁶ Consumer Product Safety Review Fall 2005; Vol. 10, NO. 2:
http://www.cpsc.gov/cpscpub/pubs/cpsr_nws38.pdf

Dump Trucks

Taillamps

Currently s. 316.221, F.S., relating to taillamps, requires taillamps or separate lamps to be constructed and placed to illuminate with a white light the rear registration plate and render it clearly legible from a distance of 50 feet to the rear. Any taillamp or taillamps, together with any separate lamp or lamps for illuminating the rear registration plate, must be wired to light up whenever the headlamps or auxiliary driving lamps are lighted.

License Plates

Section 320.0706, F.S., requires the owner of any commercial truck of a gross vehicle weight of 26,001 pounds or more to display the registration license plate on both the front and rear of the truck in conformance with all the requirements of s. 316.605, F.S. However, the owner of a truck tractor is required to display the registration license plate only on the front of such vehicle. Current law does not provide for a height requirement for the display of license plates on commercial trucks of gross vehicle weight of 26,001 pounds or more.

Motor Carrier Compliance

Hours of Service

The federal Motor Carrier Safety Assistance Program (MCSAP) provides funding to all the states, territories and the District of Columbia for state enforcement of the Federal Motor Carrier Safety Regulations (FMCSRs). The purpose of the MCSAP financial assistance to states is to reduce the number and severity of crashes and hazardous materials incidents involving commercial motor vehicles (CMVs).

To be eligible for MCSAP funding, a state must adopt and enforce compatible regulations identical for interstate transportation and within the federal tolerance guidelines⁷ for intrastate transportation. The federal tolerance guidelines set forth limited deviations from the FMCSRs that are allowed in Florida's laws and regulations. These variances apply only to motor carriers, CMV drivers, and CMVs engaged in intrastate commerce and are not subject to federal jurisdiction.

According to federal law, 49 C.F.R. 350.345, 100 percent funding for all states may be granted if the following criteria are met:

- If the state law achieves the same purpose as the corresponding federal regulations;
- If the additional variances do not apply to interstate commerce; and
- If the additional variances are not likely to have an adverse impact on safety.

Florida currently receives 50 percent (\$3.3 million) of its allocated federal funding (\$6.6 million) through MCSAP. The state does not receive 100 percent MCSAP funding because it is not in compliance with the federal hours of service regulations for intrastate truck drivers.

⁷ 49 C.F.R. 350.341

Sections 316.302, 316.003, and 316.515, F.S., provide the following variances and are not consistent with the safety goals of the U.S. Department of Transportation:

- All intrastate drivers (except hazardous materials drivers) may drive 15 hours (12 allowed under the tolerance guidelines);
- Citrus growers and forestry drivers are exempt from Florida's maximum driving time regulations, which are incompatible with federal allowances;
- 200-mile radius drivers are exempt from log requirements (150 allowed by the tolerance guidelines);
- Drivers can drive 72 hours in 7 days, or 84 hours in 8 days (70 hours in 7 days and 80 hours in 8 days are allowed by the tolerance guidelines); this restarts every 24 hours;
- Drivers of farm or forest products and unprocessed agricultural products during harvest season are exempt from the federal requirements relating to driver qualification, hours of service, inspection, repair and maintenance regulations;⁸ and
- Vehicles less than 26,000 pounds gross vehicle weight that transport petroleum products are exempt from safety regulations, including driver qualification, hours of service, inspection, repair and maintenance regulations.⁹

UCDL Vision Exemption

Currently, s. 316.302, F.S., contains a grandfather clause exempting a person who was a regularly employed driver of a commercial motor vehicle on July 4, 1987, and whose driving record shows no traffic convictions, pursuant to s. 322.61, F.S., during the 2-year period immediately preceding the application for the commercial driver's license, and who is otherwise qualified as a driver under federal law¹⁰, and who operates a commercial vehicle in intrastate commerce only, from requirements of the federal law relating to minimum vision requirements in both eyes. However, such operators are still subject to the requirements of ss. 322.12 and 322.121, F.S., relating to the examination of driver license applicants. As proof of eligibility, such driver is to have in his or her possession a physical examination form dated within the past 24 months.

Other Motor Vehicle Provisions

Currently s. 316.003, F.S., defines saddle mounts as an arrangement whereby the front wheels of one vehicle rest in a secured position upon another vehicle and all of the wheels of the towing vehicle are upon the ground.

Under current law, s. 316.515, F.S., relating to maximum width, height, and length of commercial motor vehicles, provides an automobile transporting new or used trucks may use a "saddle mount" if the overall length does not exceed 75 feet and no more than three saddle mounts are in tow.

Forestry Equipment

⁸ 49 C.F.R. 391, 395, 396

⁹ 49 C.F.R. 391, 395, 396

¹⁰ 49 C.F.R. part 391

Section 316.515, F.S., currently only allows the following machinery to operate on public roads from one point of production to another:

- Straight trucks,
- Agricultural tractors,
- Cotton module movers, not exceeding 50 feet in length,
- Any combination of up to and including three implements of husbandry including the towing power unit,
- Any single agricultural trailer with a load thereon,
- Agricultural implements attached to a towing power unit not exceeding 130 inches in width, and
- A self-propelled agricultural implement or an agricultural tractor not exceeding 130 inches in width.

This section only allows the above listed machinery to operate on public roads from one point of production to another for the following purposes:

- Transporting peanuts, grains, soybeans, cotton, hay, straw, or other perishable farm products from their point of production to the first point of change of custody or of long-term storage,
- Returning to the point of production,
- Moving the tractors, movers, and implements from one point of agricultural production to another, by a person engaged in the production of any such product or custom hauler.

Youthful Driver Monitoring Service

Section 318.143, F.S., provides sanctions for infractions by minors. Specifically, if the court finds that a minor has committed a violation of any of the provisions of chapter 316, the court may also impose one or more of the following sanctions:

- The court may reprimand or counsel the minor and his or her parents or guardian.
- The court may require the minor to attend, for a reasonable period, a traffic school conducted by a public authority.
- The court may order the minor to remit to the general fund of the local governmental body a sum not exceeding the maximum fine applicable to an adult for a like offense.
- The court may order the minor to participate in public service or a community work project for a minimum number of hours. A minor who participates in such a work program is considered an employee of the state for the purposes of chapter 440.
- The court may impose a curfew or other restriction on the liberty of the minor for a period not to exceed 6 months.

Failing to Secure Loads

Under current law, s. 316.520, F.S., a vehicle may not be driven or moved on any highway unless the vehicle is constructed or loaded to prevent its load from dropping, shifting, leaking, blowing, or escaping. Also, it is the duty of the owner and driver, of vehicles hauling dirt, sand,

lime rock, gravel, silica, trash, garbage, inanimate objects, or material that could fall or be blown from the vehicle, to prevent such materials from escaping by covering and securing the load with a close-fitting tarpaulin, cover or a load securing device meeting the requirements of 49 C.F.R., s. 393.100, F.S., or a device designed to reasonably ensure that cargo will not shift, or fall from the vehicle.

Section 318.18, F.S., provides the following penalties for violations of s. 316.520(1) or (2), F.S., failing to secure loads:

- One hundred dollars for a violation of s. 316.520(1) or (2), F.S., relating to failing to secure loads on vehicles [covering and securing the load with a tarp, cover or other load securing device is considered compliance with this section; and
- For a second or subsequent adjudication within a period of 5 years, the DHSMV must suspend the driver's license of the person for not less than 180 days and not more than one year.

Specialty License Plates

Background

The Florida Legislature created the first specialty license plates in 1986, one commemorating the seven astronauts who died when the space shuttle Challenger exploded after lift-off, and one for each of the nine universities then in the State university system.

Specialty license plates are available to any owner or lessee of a motor vehicle who is willing to pay an annual use fee for the privilege. Annual use fees ranging from \$15 to \$25, paid in addition to required license taxes and service fees, are distributed to an organization or organization in support of a particular cause or charity signified in the plate's design and designated in statute. The Legislature may create a specialty license plate under its own initiative or it can do so at the request of an organization.

Section 320.08053, F.S., provides that an organization seeking authorization to establish a specialty license plate must submit the following:

- A request for the particular license plate with a description of the proposed plate in specific terms, including a sample plate conforming to the specifications set by DHSMV.
- The results of a scientific sample survey of Florida motor vehicle owners that indicates at least 30,000 motor vehicle owners intend to purchase the proposed specialty license plate at the increased costs. The Auditor General is required to validate the methodology, results, and any evaluation by DHSMV of the scientific sample survey prior to the submission of the specialty license plate for approval by the Legislature.
- An application fee, not to exceed \$60,000, to defray DHSMV's cost for reviewing the application and developing the specialty license plate, if authorized.
- A marketing strategy outlining both the short and long term marketing plans and a financial analysis outlining the anticipated revenue and the planned expenditures of the requested specialty license plate.

The required documentation and fees must be submitted at least 90 days before the convening of the next regular session of the Florida Legislature. If a specialty license plate is approved by law, the organization must submit a proposed art design for the specialty plate to the DHSMV no later than 60 days after the act becomes a law. If the specialty license plate is not approved by the Legislature, then the application fee is refunded to the requesting organization. The word “Florida” must appear in the same location on each specialty license plate in such a size and location that is clearly identifiable on the license plate.

Section 320.08056, F.S., provides DHSMV is responsible for developing the specialty license plates and must begin production and distribution within one year after approval of the specialty license plate by the Legislature. Specialty license plates must bear the design required by law for the appropriate specialty plate, and the designs and colors must be approved by the DHSMV. In addition, the specialty license plate must bear the imprint of numerals from 1 to 999, inclusive, capital letters “A” through “Z”, or a combination thereof.

The DHSMV is authorized to annually retain the first proceeds derived from the annual use fees collected in an amount sufficient to defray each specialty plates pro rata share of the DHSMV’s costs directly related to issuing the specialty license plate.

The DHSMV must discontinue the issuance of an approved specialty plate if the number of valid specialty license plates falls below 1,000 plates (including annual renewals) for at least 12 consecutive months. The DHSMV is authorized to discontinue the issuance and distribution of specialty plates if the organization no longer exists or if the organization has stopped providing services authorized to be funded. To date, only three plates have ever been discontinued for lack of sales. These plates are the Girl Scouts plate, the Orlando Predators plate, and the Tampa Bay Storm plate.

Annual use fees or any interest earned from those fees may not be used for commercial or for-profit activities, or for general administrative expenses (except as specifically authorized or to pay the cost of the audit or report required to ensure the proceeds are used as authorized).

Section 320.08058, F.S., lists the approved specialty license plates and specifies funding requirements.

Section 320.08068, F. S. provides for the uses and distribution of annual use fees for the motorcycle specialty license plates.

Section 320.08062, F.S., requires all organizations receiving annual use fee proceeds from the DHSMV to be responsible for ensuring proceeds are used in accordance with ss. 320.08056 and 320.08058, F.S. Each organization is either subject to an audit or is required to annually attest, under penalties of perjury, that such proceeds were used correctly.

The Legislature has authorized 106 specialty license plates to date. Sales of specialty license plates generated more than \$26 million in annual use fee revenues in 2004, and more than \$29 million in 2005. Since the program’s inception in 1986, the DHSMV has collected annual use fees totaling more than \$280 million.

Operation Iraqi Freedom and Operation Enduring Freedom License Plates

Currently an owner or lessee of a private vehicle who is a resident of the state and an active or retired member of the Florida National Guard, a survivor of the attack on Pearl Harbor, a recipient of the Purple Heart medal, or an active or retired member of any branch of the United States Armed Forces Reserve, may apply to DHSMV and be issued either a "National Guard," "Pearl Harbor Survivor," "Combat-Wounded Veteran," or "U.S. Reserve" license plate.

Motor Vehicle Dealers***Continuing Education & Training***

Currently s. 320.27, F.S., requires all independent motor vehicle dealers to complete eight hours of continuing education prior to filing the renewal forms to DHSMV. The continuing education is to include at least two hours of legal or legislative issues, one hour of department issues, and five hours of relevant motor vehicle industry topics. The education may be provided in a classroom setting or by correspondence. This section also requires that for each initial license application, franchise motor vehicle dealers or an employee must attend an eight hour training and information seminar. The seminar includes, but is not limited to, dealer requirements, which include bookkeeping and recordkeeping procedures, requirements for the collection of sales and use taxes, and other information that will promote good business practices.

Licenses

Section 320.27(9), F.S., authorizes DHSMV to deny, suspend, or revoke a motor vehicle dealer license upon proof that a licensee has committed, with sufficient frequency so as to establish a pattern of wrongdoing on the part of a licensee, violations of certain activities.

Mobile Home Dealers

Currently s. 320.77, F.S., does not include a definition for "mobile home salesperson."

Mobile Home and Recreational Trust Fund

Section 320.781, F.S., establishes the Mobile Home and Recreational Trust Fund (trust fund). The trust fund must be used to satisfy any judgment by any person, against a mobile home or recreational vehicle dealer or broker for damages, restitution, or expenses, including reasonable attorney's fees, resulting from a cause of action directly related to the conditions of any written contract made by him or her in connection with the sale, exchange, or improvement of any mobile home or recreational vehicle, or for any violation of ch. 319, F.S., or ch. 320, F.S.

Driver's Licenses and Identification Cards***Hearing officers***

The Civil Traffic Infraction Hearing Officer Program is authorized under ss. 318.30-318.38, F.S. The intent of the program is to use the officers at the county level but under the supervision of the Supreme Court. The officers may accept pleas from and decide the guilt or innocence of persons charged with civil traffic infractions (s. 318.32, F.S.). However, hearing officers shall not:

- Have the power to hold a defendant in contempt of court, but shall be permitted to file a motion for order of contempt with the appropriate state trial court judge;
- Hear a case involving a crash resulting in injury or death;
- Hear a criminal traffic offense case or a case involving a civil traffic infraction issued in conjunction with a criminal traffic offense; or
- Have the power to suspend a defendant's driver's license pursuant to s. 316.655(2).

Background: The REAL ID Act

The REAL ID Act of 2005, signed into law May 2005, sets a May 2008 deadline for states to add detailed personal information to driver's licenses and identification (ID) cards to ensure licensed drivers and persons issued ID cards are United States citizens or legal immigrants. Florida has begun the implementation of the REAL ID Act to ensure Florida's driver licenses and ID cards can be used for Federal identification purposes.

Currently the following provisions of the REAL ID Act are being enforced in Florida:

- Requiring identity documents which evidences lawful presence;
- Obtaining minimum document requirements of full legal name, date of birth, and gender;
- Capturing and digitizing photographs and signatures;
- Obtaining the address of principle residence;
- Producing licenses and identification cards with three levels of security features – overt, covert, and forensic, as well as the security of the equipment and materials;
- Utilizing common machine readable technology with defined minimum data elements;
- Obtaining proof of Social Security Number which is verified through the Social Security Administration;
- Verifying legal presence through the Department of Homeland Security's Systematic Alien Verification for Entitlements (SAVE);
- Issuing temporary and limited tenure licenses and identification cards for non-citizens based on term of legal presence;
- Digital scanning and storing of identity source documents of non-United States citizens and the use of document authentication equipment;
- Fraudulent document training for our field staff statewide;
- Subjected all persons authorized to manufacture or procedure cards to appropriate security clearances. (Criminal background checks for our employees and vendors);
- Maintain a state motor vehicles database that contains all data fields printed on the drivers' licenses and identification cards; and their driving histories; and
- Limited the period of validity of all driver's licenses and identification cards to a period not to exceed eight years.

Driver's License Definitions

Currently, s. 322.01, F.S., defines "driver's license" as a certificate which, subject to all other requirements of law, authorizes an individual to drive a motor vehicle. Currently this section of law does not provide definitions for identification cards or temporary driver licenses.

Application for Licenses

Currently, s. 322.05, F.S., specifies that the DHSMV may not issue a license to a person who is at least 16 years of age, but is under 18 years of age unless the person meets certain requirements and holds a valid :

- Learner's driver's license for at least 12 months, with no traffic convictions, before applying for a license;
- Learner's driver's license for at least 12 months and who has a traffic conviction but elects to attend a traffic driving school for which adjudication must be withheld; or
- License that was issued in another state or in a foreign jurisdiction and that would not be subject to suspension or revocation under the laws of this state.

Currently, s. 322.08, F.S., requires the following information for proof of nonimmigrant classification provided by the Department of Homeland Security, for an original driver's license:

- A notice of hearing from an immigration court scheduling a hearing;
- A notice from the Board of Immigration Appeals acknowledging a pending appeal;
- A notice of the approval of an application for adjustment of status issued by the Immigration and Naturalization Service;
- Any official documentation confirming the filing of a petition for asylum status or other relief issued by the Immigration and Naturalization Service;
- A notice of action transferring any pending matter from another jurisdiction to this state issued by the Immigration and Naturalization Service; and
- An order of an immigration judge or immigration officer granting any relief that authorizes the alien to live and work in the United States.

Also under s. 322.08, F.S., the presentation of an employment authorization card, or proof of nonimmigrant classification, both provided by the Department of Homeland Security, for an original driver's license, entitles the applicant to a driver's license for a period not to exceed the expiration date of the document presented or 2 years, whichever occurs first.

ID Cards

Currently s. 322.051, F.S., relating to ID cards, provides any person who is 12 years of age or older, or any person who has a disability, regardless of age, who applies for a disabled parking permit¹¹, under Florida law can be issued an ID card by DHSMV upon completion of an application and payment of an application fee.

Section 322.051, F.S., also requires the following documents to be presented in order to prove nonimmigrant classification for purposes of obtaining an ID card:

- A notice of hearing from an immigration court scheduling;
- A notice from the Board of Immigration Appeals acknowledging a pending appeal;
- A notice of the approval of an application for adjustment of status issued by the Bureau of Citizenship and Immigration Services;

¹¹ Section 320.0848, F.S.

- Any official documentation confirming the filing of a petition for asylum status or any other relief issued by the Bureau of Citizenship and Immigration Services;
- A notice of action transferring any pending matter from another jurisdiction to Florida, issued by the Bureau of Citizenship and Immigration Services; and
- An order of an immigration judge or immigration officer granting any relief that authorizes the alien to live and work in the United States.

Also under s. 322.051, F.S., the presentation of an employment authorization card, or proof of nonimmigrant classification, both provided by the Department of Homeland Security, for an original identification card, entitles the applicant to an identification card for a period not to exceed the expiration date of the document presented or 2 years, whichever occurs first.

Suspension of License and Right to Review

Background: Driving Under the Influence (DUI)

Currently, when an individual is arrested for a violation of s. 316.193, F.S., and has an unlawful blood or breath level of .08 or higher or refuses to submit to a breath, blood, or urine test when requested by a law enforcement officer, the individual's driving privilege is suspended at the time of arrest.¹² The administrative suspension statute sets forth procedures for reviewing the driver's license suspension and the process that must be followed by the department for sustaining, amending, or invalidating the suspension, and the right to appeal such decisions.

Lawful Arrest

According to a recent Florida case¹³, s. 322.2615, F.S., provides that during a formal administrative review of a driver license suspension, the hearing officer must determine whether the person was placed under lawful arrest for a violation of s. 316.193, F.S., if the validity of the traffic stop is challenged. The court's opinion stated, "This provision contemplates that issues relating to the lawfulness of the stop... will be resolved under the issue concerning the lawfulness of the arrest."¹⁴

Driver's License Services – Department of Highway Safety and Motor Vehicles

The DHSMV's Division of Driver Licenses administers driver license-related activities, which are intended to increase consumer protection and promote public safety by licensing only those drivers who demonstrate the necessary knowledge, skills, and abilities to operate motor vehicles on Florida's roads; controlling and improving problem drivers by suspending and revoking the licenses of drivers who abuse their driving privileges; monitoring drivers to ensure they carry the required insurance to be financially responsible for their actions; and maintaining driver history records. Several registration programs are also included through driver license services, which are provided through the driver license offices. They are as follows: (1) Voter registration; (2) Organ Donor registration; (3) Career Criminal registration; (4) Sexual Offender/Predator registration; and (5) Selective Service registration. According to DHSMV, there were 15,007,005

¹² Section 322.2615, F.S.

¹³ See *Adam Schwartz v. State of Florida, Department of Highway Safety and Motor Vehicles*, 2005 WL 3481087 (Fla.App.3 Dist.)

¹⁴ *ID.*

persons holding Florida drivers' licenses as of January 2005. The DHSMV estimates in 2005-2006 there will be an estimated 15,888,511 licensed Florida drivers.

Driver license-related activities are divided into 4 service categories: (1) Driver Licensure Service Category which provides licensing services including issuing driver licenses and identification cards; answering customer inquiries over the telephone and Internet; maintaining comprehensive driver history; and maintaining the statewide traffic citation system; (2) Motorists Financial Responsibility Compliance Service Category which is responsible for ensuring licensed drivers comply with Florida automobile insurance laws and requirements to carry Personal Injury Protection (PIP) and Property Damage Liability (PDL) insurance coverage, and Bodily Injury Liability coverage if required; (3) Identification and Control of Problem Drivers Service Category which is responsible for identifying and controlling problem drivers through suspending, revoking, disqualifying, and canceling driving privileges, conducting administrative reviews for issuance of limited restricted licenses for offenders, and approving course curriculum and evaluating driver improvement-related course programs; and (4) Executive Direction and Support Services Service Category which administers general business functions, provides leadership and direction, and supports all driver license-related activities.

During fiscal year 2005-2006, the Division of Driver Licenses was appropriated \$97,802,007 and authorized 1,614 full-time positions. According to DHSMV, during fiscal year 2004-2005 the Driver Licenses Program (Division of Driver Licenses) collected about \$186 million from driver license fees and from other driver license related revenues. The division currently operates 100 field offices distributed throughout the state. Almost 1,000 of the division's positions are assigned to field operations.

Driver License Services – County Tax Collectors

Sections 322.02 and 322.135, F.S., respectively, provide that the DHSMV may authorize tax collectors to serve as exclusive agents for the purposes of issuing driver's licenses and other driver's licensing services. Currently, 28 tax collectors are providing driver license services at 59 locations. Services available through the tax collectors include new licenses, renewals, duplicates, learner's permits, and identification cards. In addition, tax collectors are authorized to provide commercial driver license (CDL) services. However, a number of the participating tax collectors have opted not to administer the skills (road) test. Tax collectors who serve as driver's license agents may charge an additional \$5.25 fee for driver license services they provide.

Driver License Services – Current Outsourcing Contracts

Section 322.56, F.S., allows DHSMV to, by contract, interagency agreement, or interlocal agreements, authorize a person, entity of the state government, a subdivision of state government, a public or private corporation, a firm, an organization, a school, or an entity or a local government to administer the written and driving skills portions of an examination for classes and types of driver's licenses, the results of which may be accepted in lieu of the results of written and driving skills examination given by DHSMV. The DHSMV currently outsources commercial driver skills testing, contracting with approximately 450 third party testers to conduct commercial driver license (CDL) skills tests. Also, the DHSMV contracts with private organizations and community/technical colleges to provide motorcycle safety courses and skills

tests pursuant to s. 322.0255, F.S. Furthermore, the DHSMV contracts with schools to conduct driver education and testing for the Driver Education Licensing Assistance Program; contracts with a private vendor to provide driver license equipment, software and human resources to produce centrally issued driver licenses and identification cards; and is conducting a pilot project by contracting with providers of on-line courses of traffic law and substance abuse education to conduct Florida Class E (operator) driver license knowledge tests.

III. Effect of Proposed Changes:

The following discussion represents a section-by section analysis of the CS:

Section 1 amends s. 207.008, F.S., to revise the requirements for retention of records by motor carriers as required by DHSMV. Specifically, motor carriers must retain the records upon which each quarterly tax return is based for a period of four years following the due date or filing date of the return, whichever is later.

Section 2 amends s. 207.021, F.S., to grant DHSMV statutory rulemaking authority regarding settlement or compromise of chapter 207, F.S., taxes, penalties or interest. The amendment also specifies that during any proceeding arising under this section, the motor carrier has the right to be represented at and record all procedures at the motor carrier's expense.

The CS authorizes the executive director of DHSMV or his or her designee to enter into closing agreements with a taxpayer to settle or compromise tax liabilities. These agreements are to be in writing and prohibit further assessments by DHSMV for taxes settled and prohibit the taxpayer from seeking recovery of amounts paid under terms of the agreement. A taxpayer's liability for chapter 207, F.S., tax or interest may be compromised by DHSMV on the grounds of doubt as to liability for or the ability to collect the tax or interest. The CS specifies that doubt as to the liability of a taxpayer for tax and interest exists if the taxpayer reasonably relied on a written determination of DHSMV. A taxpayer's liability can only be settled or compromised to the extent allowable under the International Fuel Tax Agreement (IFTA)¹⁵. A taxpayer's liability for penalties may be settled or compromised if DHSMV determines the noncompliance is due to reasonable cause and not to willful negligence, willful neglect, or fraud. The DHSMV is also authorized to enter into agreements for scheduling payments of taxes, penalties, and interest resulting from audit assessments.

Section 3 amends s. 261.10, F.S., to limit, effective July 1, 2008, liability for state agencies, water management districts, counties, cities, municipal governments, and officers and employees thereof, which provide off-highway recreational areas and trails on publicly owned land. However, liability is not limited that would otherwise exist for an act of negligence by the state agency, water management district, county, or municipality, or officer or employee, that is the proximate cause of the damage, injury, or death.

¹⁵ Section 207.0281(1), F.S.

Section 4 creates s. 261.20, F.S., which effective July 1, 2008, provides restrictions, safety course requirements, required equipment and prohibited acts for the operation of off-highway vehicles on public lands.

Section 5 amends s. 316.003, F.S., to conform the current definition of “saddle mount” to that contained in federal transportation law (SAFETEA-LU).

According to FDOT, this technical revision eliminates a potential fiscal impact on the trucking industry. In addition, the FDOT is required to report areas of nonconformance of state law with federal law. Failure to conform the new SAFETEA-LU provisions could result in loss of federal safety grant and/or construction funds in the future.

Section 6 amends s. 316.006, F.S., to provide that the board of a homeowner’s association may, by majority vote, enter into agreement to permit state traffic laws to be enforced by local law enforcement agencies on private property controlled by the association.

Section 7 amends s. 316.0085, F.S., to apply the provisions relating to liability with respect to skateboarding, inline skating, and other recreational pursuits to mountain and off-road bicycling as well. In addition, this amendment requires demonstration that parental consent was provided to a governmental entity before a minor may enter certain designated areas.

Section 8 amends s. 316.1001, F.S., to exempt the owner of a leased vehicle from responsibility for failure to pay a toll violation if the motor vehicle is registered in the name of the lessee of such vehicle.

Section 9 amends s. 316.192, F.S., to revise and specify a certain act that constitutes reckless driving. Specifically, fleeing a law enforcement officer is reckless driving per se.

Section 10 amends s. 316.1955, F.S., to provide that the owner of a leased vehicle is not responsible for a violation of disabled parking requirements specified in this section if the vehicle is registered in the name of the lessee.

Section 11 amends s. 316.2015, F.S., to specifically prohibit operators of pickup trucks and flatbed trucks from allowing minors, defined as individuals under 18 years of age, from riding on the bed of these trucks unless the trucks have been modified to include secure seating and safety restraints and the minors are properly restrained. This provision applies to operation upon secure access facilities of the state such as limited access parkways and freeways. However, this section exempts operators from this provision when a truck is being operated in medical emergencies if the child is accompanied by an adult. This section of the CS revises exceptions to the provision which prohibits individuals riding on any area of any vehicle not designed or intended for the use of passengers. Finally, this CS authorizes counties to exempt themselves from the provisions contained in s. 316.2015, F.S.

Section 12 amends s. 316.2095, F.S., to delete the requirement for motorcycles to be equipped with handholds for use by passengers.

Section 13 amends s. 316.211, F.S., to require, effective January 1, 2007, motorcycles registered to persons under 21 years of age to display a license plate unique in design and color. Because the helmet exemption applies to riders over 21, this would provide law enforcement with a tool for identifying motorcycle operators under the age of 21 and allow for better enforcement of the state's helmet law requirements.

According to DHSMV, there are approximately 8,000 drivers under 21 years of age who have a motorcycle endorsement on their driver's license. The cost of designing, manufacturing, and distributing a unique motorcycle tag for this population would be absorbed within existing resources.

Section 14 creates s. 316.2123, F.S., to allow "ATV's" to be operated during the daytime by a licensed driver or a minor under the supervision of a licensed driver on un-paved roadways where the posted speed limit is less than 35 mph. The drivers are required to provide proof of ownership if requested by law enforcement. However, this CS authorizes counties to exempt themselves from the provisions contained in s. 316.2123, F.S.

Section 15 amends s. 316.2125, F.S., to authorize local governments to enact golf cart equipment and operation regulations within a retirement community that are more restrictive than state law. Public notification of such regulation is required and must apply only to unlicensed drivers.

Section 16 creates s. 316.2128, F.S., to require a person selling "motorized scooters" and "miniature motorcycles" to display a notice that these vehicles are not legal to operate on roads or sidewalks. This notice and a copy of the statute must be provided to the consumer prior to purchase. Violations of the sales disclosure provision are punishable under the "Florida Deceptive and Unfair Trade Practices Act"¹⁶ and are liable for a civil penalty of not more than \$10,000 for each violation plus applicable court costs and attorney fees.

Section 17 amends s. 316.221, F.S., to exempt dump truck vehicles and vehicles having a dump body from the requirement that the rear registration plate be illuminated when driving at night.

Section 18 amends s. 316.302, F.S., to bring intrastate hours-of-service requirements into compliance with federal tolerance guidelines, to provide for changes recently enacted into federal law for utilities and agricultural transportation, and to revise the requirements for a CDL vision exemption. The CS also contains the following changes:

- Deletes an exemption from federal requirements relating to driving and resting, changing the maximum time limit a commercial motor vehicle driver may drive in a 24 hour period from 15 hours to the federally required 12 hours;
 - This provision does not apply to utility service vehicles.
- Changes the weekly limit of on duty hours from 72 hours to 70 hours in any period of 7 consecutive days, and from 84 to 80 hours in any period of 8 consecutive days if the motor carrier operates every day of the week;
 - This provision does not apply to drivers operating solely within the state and transporting agricultural commodities or farm supplies or to utility service vehicles.

¹⁶ Section 501.201, F.S.

- Updates the reference to current (October 1, 2005) federal rules and regulations applicable to commercial motor vehicles.

According to FDOT, Florida currently receives only 50% (\$3.3 million) of its allocated federal funding (\$6.6 million) through MCSAP due to the intrastate hours of service allowances. Recent trends indicate failure to bring intrastate requirements within the federal tolerance guidelines could jeopardize additional federal highway funding.

Section 19 amends s. 316.515(5), F.S., to authorize the Florida Department of Transportation (FDOT) to issue over-width permits for implements of husbandry greater than 130 inches, but not more than 170 inches. Also, this section of the CS allows equipment used exclusively for the purpose of harvesting forestry products, not exceeding 136 inches in width and which is not capable of speeds exceeding 20 miles per hour, to operate on public roads to get from one point of harvest to another point of harvest not to exceed 10 miles, by a person engaged in the harvesting of forest products. In addition, these vehicles must be operated during daylight hours only, in accordance with all safety requirements prescribed s. 316.2295(5) and (6), F.S., relating to slow moving vehicle emblems on farm tractors, farm equipment and implements of husbandry.

This section also amends s. 316.515(10), F.S., to conform the current definition of “automobile towaway and driveaway operations” to that is contained in SAFETEA-LU.

According to FDOT, this technical revision eliminates a potential fiscal impact on the trucking industry. In addition, the FDOT is required to report areas of nonconformance of state law with federal law. Failure to conform the new SAFETEA-LU provisions could result in loss of federal safety grant and/or construction funds in the future.

Section 20 amends s. 318.143, F.S., to allow the court to require a minor and his or her parents or guardians to participate in a registered youthful driver monitoring service.

Section 21 creates s. 318.1435, F.S., to define the term “youthful driver monitoring service” to mean an entity that enables parents or guardians to monitor the driving performance of their minor children. The section also establishes procedures by which such an entity may provide monitoring services and specifies registration requirements.

Section 22 amends s. 318.15, F.S., to authorize the DHMSV to contract with any county constitutional officer for driver license services in counties where the tax collector is not elected or does not provide the services.

Section 23 amends s. 318.18(12), F.S., to provide for an increase in penalties for failing to secure loads on vehicles. The CS doubles the \$100 fine making it \$200 plus applicable fees and court costs and increases the driver’s license suspension for a second offense from a minimum of 180 days and a maximum of one year to a minimum of one year and a maximum of two years.

Section 24 amends s. 318.32, F.S., to prohibit hearing officers from revoking a defendant’s driver’s license pursuant to 316.655(2), F.S.

Section 25 amends s. 320.02, F.S., effective July 1, 2008, to require that the owner of a motorcycle, motor-driven cycle, or moped operated on the roads of this state, if a natural person, must present proof that he or she has a valid motorcycle endorsement as required in chapter 322, F.S., prior to original registration.

Section 26 amends s. 320.03, F.S., to exempt the owner of a leased vehicle, if the vehicle is registered in the name of a lessee, from provisions that limit re-registration of a vehicle for non-payment of toll violations, parking tickets, or wrecker liens.

Section 27 amends s. 320.07, F.S., to exempt the owner of a leased vehicle, if the vehicle is registered in the name of a lessee, from penalties for not displaying a valid mobile home sticker on a mobile home and from delinquency fees related to an invalid registration certificate.

Section 28 amends s. 320.0706, F.S., to allow the owners of dump trucks to place the rear license plate on the gate no higher than 60 inches to allow for better visibility.

Section 29 amends s. 320.08056, F.S., to exempt collegiate license plates from the requirement that the DHSMV must discontinue a specialty license plate if the number of valid registrations falls below 1,000 plates for at least 12 consecutive months. This section of the CS also establishes a \$25 annual usage fee for the “Future Farmers of America” specialty license plate.

Section 30 amends s. 320.08058, F.S., to create a “Future Farmers of America” license plate. Specifically, the Florida Future Farmers of America Foundation, Inc., will retain all revenue from the annual use fee to offset costs of developing and establishing the plates. Thereafter, up to 10 percent of the annual use fee may be used for administrative, handling and disbursement expenses, and up to 5 percent may be used for advertisement and marketing costs. All remaining annual use fee revenue shall be used by the Florida Future Farmers of America Foundation, Inc., to fund its activities, programs, and projects including, but not limited to, student and teacher leadership programs, the Foundation for Leadership Training Center, teacher recruitment and retention, and other special projects.

According to DHSMV, the Florida Future Farmers of America Foundation, Inc., has met all the requirements set fourth in s. 320.08053, F.S. with regard to the “Future Farmers of America” specialty license plate.

Section 31 amends s. 320.089, F.S., to create two new special license plates, specifically Operation Iraqi Freedom and Operation Enduring Freedom. Such plates may be issued to a current or former member of the United States military, who was deployed and served in Iraq during Operation Iraqi Freedom or in Afghanistan during Operation Enduring Freedom, upon application, accompanied by proof of service, and payment of the vehicle license tax.

Section 32 amends s. 320.27(4), F.S., to provide that each independent motor vehicle dealer shall certify that the dealer (owner, partner, officer, or director of the licensee or a full-time employee of the licensee that holds a responsible management-level position) has completed 8 hours of continuous education prior to filing renewal forms with the DHSMV. This section also exempts applicants for a new franchise motor vehicle dealer license, who has held a valid franchise motor

vehicle dealer license continuously for the past 2 years and who remains in good standing with DHSMV, from the pre-licensing training requirement.

This CS amends s. 320.27(9), F.S., to allow the DHSMV to deny, suspend, or revoke any license issued under the provisions of ss. 320.27, 320.77, or 320.771, F.S., for any violation of failure to register a mobile home salesperson with DHSMV.

Section 33 amends s. 320.405, F.S., to provide that the DHSMV is authorized to enter into agreements for scheduling the payment of taxes or penalties owed to the DHSMV as a result of audit assessments issued relating to the International Registration Plan.

Section 34 amends s. 320.77, F.S., to provide a definition of a “mobile home salesperson” and specify salesperson registration requirements.

Section 35 amends s. 320.781, F.S., to allow the Recreational Vehicle Protection Trust Fund to satisfy any judgment or claim against a mobile home or recreational vehicle (RV) dealer or broker for damages, restitution, or expenses. The section specifies conditions that must exist for a person to be eligible to file a claim against the trust fund.

Section 36 amends s. 322.01, F.S., to revise the definition of “driver license”; and to define “identification card”, “temporary driver’s license”, and “temporary identification card”. Specifically, the amendment addresses the following definitions to comply with federal codes:

- “Driver’s license” denotes an operator’s license as defined in 49 U.S.C. s. 30301;
- “Identification card” means a personal identification card issued by the department and which conforms to the definition in 18 U.S.C. s. 1028 (d); and
- “Temporary driver license” or “temporary identification card” means a certificate issued by the department, subject to all other requirements of law, which authorizes an individual to drive a motor vehicle, and which denotes an operator’s license as defined in 49 U.S.C. s. 30301, or a personal identification card issued by the department, which conforms to the definition in 18 U.S.C. s. 1028(d), and which denotes that the holder is permitted to stay for a short duration of time specified in the document issued and is not a permanent resident of the United States.

According to DHSMV, confirming the definitions of “driver’s license” and “identification card” is a step toward the 2008 implementation of the REAL ID Act, which will result in a fiscal impact to DHSMV for programming modifications to change the expiration dates of these licenses and cards.

Section 37 amends s. 322.02, F.S., to revise legislative intent provisions to include references to county constitutional officers providing driver licensing services.

Section 38 amends s. 322.05, F.S., requires a person who is between 16 and 18 years old to have no moving traffic convictions before applying for a driver’s license unless he or she has elected to attend a driving school.

Section 39 amends s. 322.051, F.S., to reduce the minimum age requirement for which ID cards may be issued from 12 years of age to 5 years of age; to allow any official documentation

confirming the filing of a petition for refugee status to the list of acceptable identification documents as proof of nonimmigrant classification of an applicant for an identification card; to allow evidence of a pending application for adjustment of status to that of an alien lawfully admitted for permanent or conditional permanent resident status in the United States to be used for proof on nonimmigrant classification in the application of an identification card; and to reduce the maximum period of entitlement for an identification card from 2 years to 1 year.

Section 40 amends s. 322.08, F.S., to allow any official documentation confirming the filing of a petition for refugee status to the list of acceptable identification documents as proof of nonimmigrant classification of an applicant for a driver's license; to allow evidence of a pending application for adjustment of status to that of an alien lawfully admitted for permanent or conditional permanent resident status in the United States to be used for proof on nonimmigrant classification in the application of a driver's license; and to reduce the maximum period of entitlement for a driver's license or temporary permit from 2 years to 1 year. Also, the CS corrects references relating to the former U. S. Immigration and Naturalization Service (INS). Certain INS actions and documents referenced in s. 322.08, F.S., are now the responsibility of the U. S. Citizenship and Immigration Services, a bureau of the U. S. Department of Homeland Security.

Section 41 amends s. 322.12, F.S., effective July 1, 2008, to require all first-time applicants, regardless of age, for licensure to operate a motorcycle to provide proof of completion of a DHSMV approved motorcycle safety course prior to the applicant being issued a license to operate a motorcycle.

According to DHSMV, fatalities among motorcyclist have risen in Florida. Statistics show within the last two years, fatalities among those riders completing the Florida Rider Training Program were dramatically lower. These changes to licensing and registration laws are intended to reduce crashes among motorcyclists.

The DHSMV also provided during 2005, over 33,000 individuals completed DHSMV approved motorcycle courses provided by 50 sponsors. Based on the 2005 number of new motorcycle titles issued, an estimated 135,363 individuals could be required to complete a motorcycle safety course. If enacted, this section will have a significant workload impact on DHSMV's Florida Rider Training Program due to the increased instructor preparation and training and to quality assurance, which will be absorbed within existing resources.

Section 42 amends s. 322.121, F.S., to revise periodic license examination requirements. This change would correct the cross references to paragraphs (a) through (f) of s. 322.57(1).

Section 43 amends s. 322.135, F.S., to authorize DHMSV to contract with any county constitutional officer for driver license services in counties where the tax collector is not elected or does not provide the services.

Section 44 amends s. 322.2615, F.S., to remove a requirement to show, during a DHSMV administrative review of a driver license suspension, that a lawful arrest for a violation of s. 316.193, F.S. occurred in order to suspend the driver's license. The amendment:

- Clarifies the following grounds for a suspension of driving privileges by a law enforcement or correctional officer:
 - Driving or in actual physical control of a motor vehicle with an unlawful blood-alcohol level or breath-alcohol level of 0.08 or higher; or
 - Refusing to submit to a urine test, or a test of his or her breath-alcohol or blood-alcohol level;
- Provides that if a blood test has been administered and the results are not available at the time of arrest, the officer or the agency employing the officer is required to transmit the results to DHSMV within 5 days after receipt of the results.
- Requires the law enforcement officer to forward to DHSMV, within 5 days after issuing the notice of suspension of the driver's license, an affidavit stating the officer's grounds for belief the person was driving or in actual physical control of a motor vehicle while under the influence of alcoholic beverages, or chemical or controlled substances;
- Clarifies the language relating to informal review by changing the word arrested to suspended. (This change would separate the suspension from the criminal charge of driving under the influence);
- Clarifies the authority of a hearing officer when the person whose license was suspended is under formal review, specifying that the hearing officer may subpoena and question officers and witnesses;
- Clarifies the issues within the scope of review for formal review hearings, specifying the blood and breath alcohol level for suspension, and removing the reference to arrest under s. 316.193, F.S.;
- Provides that materials submitted to DHSMV by law enforcement or correctional agencies are self-authenticating and are part of the record to be considered by the hearing officer;
- Requires the crash report to be considered by the hearing officer notwithstanding the prohibition of s. 316.066(4), F.S., against the use of crash reports in civil or criminal trials;
- Clarifies the language related to DHSMV procedures that follow the hearing officer's determination, specifying the suspension period commences on the date of issuance of notice of suspension rather than the date of arrest;
- Allows a law enforcement agency to appeal any decision of DHSMV that invalidates the suspension by a petition for writ of certiorari to the circuit court; and
- Provides that the DHSMV's decision, and any circuit court review of that decision, may not be considered in any DUI trial for a violation of s. 316.193, F.S.

Section 45 creates an undesignated section of law to direct DHSMV to study the outsourcing of driver license services to a provider, in whole or in part, while retaining responsibility and accountability for the services. In addition, the CS requires the DHSMV to submit a report of recommendations to the Governor, the President of the Senate, and the Speaker of the House of Representatives by January 1, 2007.

Section 46 specifies the act takes effect October 1, 2006, except as otherwise provided.

IV. Constitutional Issues:**A. Municipality/County Mandates Restrictions:**

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:**A. Tax/Fee Issues:**

The increase from \$100 to \$200 in penalties for failing to secure loads on vehicles will result in an indeterminate increase in civil penalty revenues. Such revenues are distributed pursuant to s. 318.21, F.S. The Revenue Estimating Conference has not reviewed this provision.

The \$25 fee for the Future Farmers of America specialty license plate will generate an indeterminate amount of revenues for the Florida Future Farmers of America Foundation.

B. Private Sector Impact:***Pocket Motorcycles and Motorized Scooters Notice***

Section 16 creates s. 316.2128, F.S., requiring a person selling “motorized scooters” and “miniature motorcycles” to display a notice that these vehicles are not legal to operate on roads or sidewalks. This notice and a copy of the statute must be provided to the consumer prior to purchase. Violations of the sales disclosure provision are punishable under the “Florida Deceptive and Unfair Trade Practices Act” and are liable for a civil penalty of not more than \$10,000 for each violation plus applicable court costs and attorney fees. This change could have an indeterminate negative fiscal impact on the sellers of these vehicles for complying with display and disclosure requirements, or if these requirements are violated.

Motor Carrier Compliance

Section 18 amends s. 316.302, F.S., relating to intrastate hours-of-service requirements. Due to hour-of-service changes the CS could have a negative fiscal impact on the commercial motor carrier industry. The amount of the operational costs associated with these changes is unknown.

Forestry Equipment

Section 19 amends s. 316.515, F.S., to allow certain forestry equipment to operate on public roads to go from one point of harvest to another. This change could have an indeterminate positive fiscal impact on the owners of the equipment being transported.

Franchise Motor Vehicle Dealers

Section 32 amends s. 320.27, F.S., to delete the current provision requiring new franchise motor vehicle dealers to attend an eight hour training and information seminar for each initial license application under certain conditions. This could have an indeterminate positive fiscal impact on these franchise motor vehicle dealers and an indeterminate negative fiscal impact on the training and information seminar providers.

Motorcycle Riders

Section 41 amends s. 322.12, F.S., effective July 1, 2008, to require all applicants for a motorcycle driver's license endorsement regardless of age to successfully complete a motorcycle safety course. These courses are offered by different vendors throughout the state. The course registration fees vary and will result in an indeterminate negative fiscal impact on motorcycle drivers over 21 and an indeterminate positive fiscal impact for the course providers.

C. Government Sector Impact:

Motor Carrier Compliance

Section 18 amends s. 316.302, F.S., relating to intrastate hours-of-service requirements. Florida currently receives 50 percent (\$3.3 million) of its allocated federal funding (\$6.6 million) through the federal Motor Carrier Safety Assistance Program (MCSAP). The provisions of the CS relating to commercial motor vehicles would allow Florida to receive the full federal allocation of \$6.6 million for the MCSAP. Failure to bring intrastate requirements within the federal tolerance guidelines could jeopardize additional federal highway funding.

DHSMV Software Updates

According to the DHSMV, implementation of the CS will require contracted programming modifications to the Driver License and Motor Vehicle Software Systems which will be absorbed within existing resources.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Summary of Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
